IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 213/1999

Shri Shrikrishna Shetye (since deceased)
through his legal representative
Smt. Suvarna Shrikrishna Shetye,
major of age, widow of late
Shrikrishna Shetye, residing at
Ansabhat, H.No.E/6105, Mapusa, Goa. ..... Petitioner.

V/s.

1. Shri Justin Acacio D'Souza alias
J.A. D'Souza (deceased)
through his legal representative
Mary D'Souza, 12, Shakerpearl Road,
Walton Staw E 14, U.K.

2. The Additional Rent Controller – II,
Mapusa, Goa.

3. The Administrative Tribunal of Goa,
Panaji, Goa. ..... Respondents.

Mr. J. P. Mulgaonkar, Advocate for the petitioner.

Mr. A. D. Bhobe, Advocate for respondent No.1.

CORAM : A.P. LAVANDE, J.

DATE : 24TH MARCH, 2006.

ORAL JUDGMENT :

By this petition, the petitioner takes exception to the Judgment and Order dated 13.4.1998 passed in Eviction Appeal

No.33/93 by the Administrative Tribunal, Goa, dismissing the appeal filed by the petitioner against the Judgment and Order dated 30.8.1993 passed by the Additional Rent Controller at Mapusa in Rent Case No.Rent/ARC/54/84 allowing the application dated 24.5.1984 for eviction of the original petitioner. During the pendency of this petition, the original tenant expired and his legal representative has been brought on record. Similarly, the respondent No.1, the original landlord also expired during the pendency of this petition and his legal representative has been brought on record.

2. The original applicant Justino Acacio D'Souza had filed an application for eviction of his tenant/opponent Shrikrishna Shetye in respect of the premises bearing House No.E-6-105, situated at Ansabhat Mapusa, Bardez, Goa which was leased to him on a monthly rent of Rs.100/-. The eviction was sought on two grounds, namely, subletting of the premises and the applicant's requirement of the premises for his personal occupation. The application was contested by the opponent and in the course of inquiry, the applicant examined two witnesses, including himself and the opponent examined three witnesses, including himself. The Addl. Rent Controller, after appreciating the evidence led by the parties, held against the applicant-landlord in respect of sub-letting, but in respect of requirement for the personal occupation, gave finding in favour of the applicant and ordered eviction of the opponent. In the appeal

preferred by the opponent, the judgment passed by the Rent Controller was confirmed. By the present petition, the petitioner challenges both the Judgments and Orders passed against him.

3. Mr. Mulgaonkar, learned Counsel appearing for the petitioner/opponent submitted that both, the Rent Controller as well as the Administrative Tribunal have committed jurisdictional error by not appreciating the fact that the original respondent had not established the ingredients of Section 23(1)(a)(i) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (`the Act', for short). He submitted that in order to succeed under Section 23(1)(a)(i) of the Act, the landlord has to establish that he wants to settle down in the premises in respect of which the eviction is sought. The learned Counsel further submitted that there must be some element of permanency of residence when eviction is sought under Section 23(1)(a)(i) of the Act. According to the learned Counsel, both the Administrative Tribunal as well as the Rent Controller have given a finding that the premises were required for occupation of the original applicant as and when he comes down to Goa and that too occasionally. He, therefore, submitted that the impugned Judgments and Orders are liable to be set aside inasmuch as there is an error of law apparent on the face of the record which justifies interference of this Court in exercise of writ jurisdiction by this Court. In support of his submissions, he relied upon the following Judgments :

(1)**Mst. Jagir Kaur and anr. v. Jaswant Singh,** AIR 1963 SC 1521;

(2)Smt. Jeewanti Pandey v. Kishan Chandra Pandey, (1981) 4 SCC 517

(3)**Rahabhar Productions Pvt. Ltd. v. Rajendra K. Tandon,** (1998) 4 SCC 49; and

(4)**Pratap Rai Tanwani and anr., v. Uttam Chand and anr.,** (2004) 8 SCC 490.

4. Per contra, Mr. Bhobe, learned Counsel appearing for the respondent No.1 submitted that the concurrent findings recorded by the Rent Controller as well as by the Administrative Tribunal are based on evidence on record and, therefore, having regard to the principles of interference in exercise of Writ Jurisdiction against the orders passed by the Tribunal, no interference is called for in this writ petition. He further submitted that it was the case of the original applicant that he wanted to get married and settle down in Goa and only because he had no premises in Goa to occupy, he was compelled to file the application for eviction. He invited my attention to the evidence of the plaintiff before the Rent Controller, in which the applicant has clearly deposed that he wanted to get married and settled down in Goa, but he could not do so because he had no accommodation in Goa where he could reside. The learned Counsel further submitted that the need of the original applicant was sincere and honest and, therefore, he was entitled to an order of eviction

against the original opponent though unfortunately, on account of the pendency of the proceedings he could not enjoy the fruits of the Judgments passed in his favour. He further submitted that the Rent Act strikes a balance between the landlord and the tenant and the same should be interpreted in such a way as to achieve the object enabling the landlord to evict the tenant where the statute so provides. In support of his submission, the learned Counsel relied upon the Judgments of the Apex Court in **Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta,** (1999) 6 SCC 222 and **Mst. Bega Begum and ors v Abdul Ahad Khan (dead) by L.Rs. and ors.,** (1979) 1 SCC 273.

5. I have considered the submissions made by the learned Counsel for the parties. I have also gone through the record. A perusal of the impugned Judgments and Orders discloses that both, the Administrative Tribunal as well as the Rent Controller have given concurrent finding that the applicant was successful in establishing the case under Section 23(1)(a)(i) of the Act and the applicant was successful in proving that he required the said premises for his own occupation. The applicant, in his deposition before the Rent Controller recorded on 23.12.1986 stated that he was engaged to one Mary D'Souza for a period of one and half year, but he did not get married as he did not have place to stay. In view of this clear evidence of the applicant himself, I am unable to accept the submission of Mr.

Mulgaonkar that the Judgments given by both the Courts below deserve to be quashed and set aside. I am unable to accept the submission of Mr. Mulgaonkar that the original applicant had not established that he wanted to settle down in Goa and for that purpose he wanted the premises for his occupation.

6. In so far as the Judgments relied upon by the learned Counsel for the petitioner are concerned, in my opinion, the same do not come to the rescue of the petitioner. In the case of **Pratap Rai Tanwani and anr., v. Uttam Chand and anr. (supra),** the Apex Court held that the words "reasonable requirement" postulate that there must be an element of need as opposed to a mere desire or wish and the distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire. The judgment of the Apex Court in **Rahabhar Productions Pvt. Ltd. v. Rajendra K. Tandon,** (supra) is on similar lines. In so far as the Judgment in the case of **Mst. Jagir Kaur and anr. v. Jaswant Singh (supra)** is concerned, the same was in connection with an application for maintenance filed under Section 488 of Cr.P.C. 1898 and, therefore, the same has no relevance in the present case. Similarly, the Judgment in **Smt. Jeewanti Pandey's** case, is on the point of territorial jurisdiction of the District Court for entertaining the proceedings under Section 19 of the Hindu Marriage Act, 1955.

7. Mr. Bhobe is justified in placing reliance on the Judgment of the Apex Court in **Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta's** case (supra). In para 13, the Apex Court has observed as follows :

> "... The judge of facts should place himself in the armchair of the landlord and then ask the question to himself – whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext or getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the Court.

Applying the ratio of the Apex Court in **Shiv Sarup Gupta's** case

(supra), I find considerable merit in the submission of Mr. Bhobe that in the present case, having regard to the evidence led by the parties, the Rent Controller as well as the Administrative Tribunal were absolutely justified in ordering eviction of the original opponent under Section 23(1)(a)(i) of the Act. I find myself unable to agree with the submission made on behalf of the petitioner that there is jurisdictional error committed by the Administrative Tribunal and/or the Rent Controller or that there is any error of law apparent on the face of the record. The findings recorded by both the authorities are based on the evidence on record. Therefore, in my opinion, there is no merit in the present petition and, as such, the same deserves to be dismissed. Hence, the Rule is discharged. Interim order passed in favour of the petitioner stands vacated.

8. The learned Counsel appearing for the petitioner submits that the petitioner has deposited the rent due till date. The respondent No.1 will be at liberty to withdraw the same. Considering the facts and circumstances of the case, I am inclined to grant time till 30th June, 2006 to the petitioner to vacate the premises, subject to the petitioner continuing to deposit the amount of Rs.100/- per month and filing an undertaking that the vacant possession of the premises shall be handed over to the respondent No.1 on or before 30th June, 2006 and that the petitioner shall not create any third party right thereto. Such undertaking to be filed by the petitioner within a period of four

weeks from today. The petition is disposed of in aforesaid terms with no order as to costs.

A.P. LAVANDE, J.

ssm.